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**NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS**

ORIGINAL

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

MICHAEL GARDINER, D.C.
License No. MC 2065

FINAL ORDER

TO PRACTICE CHIROPRACTIC :
IN THE STATE OF NEW JERSEY :

The New Jersey State Board of Chiropractic Examiners, following review of information that Michael Gardiner, D.C. ("respondent"), had entered a plea of guilty to two counts of an indictment charging him with health care claims fraud and use of a runner, entered a Provisional Order of Discipline on May 5, 2004. The Board preliminarily found that respondent's conviction provided a basis for discipline and proposed a five year suspension, two years of which were to be served as an active suspension, the remainder to be served as a period of probation; assessed a civil penalty of \$7,500; required completion of the ProBE or PRIME ethics courses; and an appearance before the Board prior to return to practice.

The Provisional Order provided respondent an opportunity to request a modification or dismissal of the provisional Findings of Fact or Conclusions of Law by submitting reasons in writing and providing any supporting documentation as to why those preliminary findings and conclusions should be modified or dismissed. Respondent was further offered the opportunity to provide evidence in support of mitigation of the sanctions imposed.

In response, Michael Querques, Esq., counsel for respondent, submitted a letter dated May 10, 2004, and a copy of the sentencing memorandum he had prepared in connection with respondent's criminal matter. Mr. Querques requested an opportunity to be heard in mitigation of the sanction to be imposed. The Board conducted a hearing on the issue of mitigation on July 22, 2004.

At the hearing, John Hugelmeyer, Deputy Attorney General, appeared on behalf of the State and Mr. Querques appeared on behalf of respondent. They submitted into evidence the following documents as joint exhibits:

- J-1 Letter dated July 9, 2004 from DAG Hugelmeyer to the Board
- J-2 Letter dated May 1, 2004 from Michael Querques to John Hugelmeyer, DAG
- J-3 Sentencing memorandum prepared by Mr. Querques dated October 8, 2003
- J-4 Transcript of Plea Proceedings dated July 14, 2003
- J-5 Transcript of Sentencing Proceedings dated October 17, 2003
- J-6 Intensive Supervision Program (ISP) screening report
- J-7 Indictment SGJ467-02-5 naming Michael A. Gardiner and Kim Robinson, dated November 19, 2002.

Dr. Gardiner did not testify at the hearing. Mr. Querques argued on his behalf urging the Board to reconsider the proposed financial penalty of \$7,500 given respondent's current financial condition, which includes significant arrearage in child support as well as monies owed to his parents and siblings based on loans made to him since his indictment (see J- 6, ISP screening Report, p. 4). Mr. Querques further asked the Board to consider the harshness of the penalties imposed for health care claims fraud and noted that Dr. Gardiner had already served 100 days in a state prison facility and remains in the Intensive Supervision Program which significantly restricts his freedom. Counsel also argued that the State's action in using undercover operations to secure

the indictment was unfair and that the total dollar amount of the putative fraud was not high. Under those circumstances, he asserted, the Board should reconsider its provisional discipline of a penalty and a suspension.

In response, DAG Hugelmeyer argued that Dr. Gardiner was given leniency by the criminal court sentencing judge because he was surrendering his license (see J-1, p. 2; J-5, pp 31, 35, 41). He further asserted that Dr. Gardiner admitted to his guilt in open court. He billed for services that were not rendered; he used a runner. While the Board could consider the financial circumstances in which respondent finds himself, DAG Hugelmeyer noted that the sanction set forth in the Provisional Order was in line with other penalties assessed by the Board for similar infractions.

Following arguments, the Board deliberated. After a thorough review of the record created and consideration of arguments of counsel, the Board has determined that its provisional discipline is appropriate. Respondent engaged in criminal acts when he paid money to a runner in connection with referral of two patients and when he billed an insurance carrier for services to those individuals when those services were not performed. Dr. Gardiner admitted that conduct during his plea colloquy (J-4, pp 6-8). While his counsel's arguments and submissions were thoughtful, ultimately, they were unpersuasive. The Legislature has determined that insurance fraud is to be addressed through both civil and criminal means. Licensing boards have a crucial role to play in combating such fraud. Respondent's conduct reflects poorly not just on himself but on the profession as a whole. A significant suspension and penalty as well as completion of an ethics course are appropriate under these circumstances.

As reflected in the Provisional Order, the Board will consider the time respondent has not been practicing as part of the period of active suspension. Respondent, with the Board's knowledge, ceased practicing on July 24, 2003, and therefore, will be eligible to apply for reinstatement as of July 24, 2005. The Board recognizes Dr. Gardiner's fiscal situation and,

therefore, will defer collecting the penalty imposed by this order until July 1, 2006 or until Dr. Gardiner seeks reinstatement and is reinstated by this Board, whichever occurs sooner. At the time he is reinstated, he may pay the penalty of \$7,500 in full or he may pay it over a three year period, with an initial payment of \$500 and the remaining \$7,000 in 35 monthly payments of \$200. In the event respondent chooses not to seek reinstatement before July 1, 2006, or in the event the Board declines to reinstate respondent, the full penalty of \$7,500 shall be deemed due and owing on July 1, 2006.

For purposes of this Final Order of Discipline, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, Michael Gardiner, D.C., is a chiropractor in the State of New Jersey and has been a licensee during the period when the conduct underlying his conviction occurred.

2. On or about July 14, 2003, respondent pleaded guilty in the Superior Court of Essex County, New Jersey, to Indictment No. 02-12-0024, alleging his violations of N.J.S.A. 2C:21-4.2 (Health Care Claims Fraud) and N.J.S.A. 2C:21-22.1 (Use of a runner) in his chiropractic practice. Respondent was sentenced to a term of three years incarceration on each of the two counts, to run concurrently. (Copy of the Judgment of Conviction and Order for Commitment attached as "A")

3. Respondent has not engaged in the practice of chiropractic since July 24, 2003.

CONCLUSIONS OF LAW

1. The above conviction provides grounds for the suspension of respondent's license to practice chiropractic in New Jersey pursuant to N.J.S.A. 45:1-21(f) in that the crimes for which respondent was convicted are crimes of moral turpitude and/or relate adversely to the practice of chiropractic.

ACCORDINGLY, IT IS on this / / th day of August, 2004,

ORDERED that:

1. Respondent's license to practice chiropractic in the State of New Jersey is suspended for a period of five (5) years, retroactive to July 24, 2003. The first two (2) years shall be an active suspension and the final three (3) years of the suspension shall be stayed and served as a period of probation. Such stayed period of suspension shall be activated upon a showing of respondent's non-compliance with any of the terms and conditions in this Final Order.

2. During the period of active suspension, respondent shall not practice chiropractic and shall fully attend and successfully complete and pass the ProBE (Professional Problem Based Ethics) course offered by The Ethics Group, 89 Summit Avenue, Suite 185, Summit, New Jersey 07901, or the PRIME (Professional Renewal in Medicine through Ethics) course offered by the Center for Continuing Education in the Health Professions at UMDNJ-Robert Wood Johnson Medical School, 97 Paterson Street, Room 124, New Brunswick, New Jersey 08903. Documentation of the full and successful completion of the course shall be provided to the Board.

3. Respondent shall pay a civil penalty, pursuant to N.J.S.A. 45:1-22 and N.J.S.A. 45:1-25, in the amount of \$7,500.00 for engaging in acts constituting crimes involving moral turpitude and relating adversely to the practice of chiropractic, contrary to N.J.S.A. 45:1-21(f). Payment of the civil penalty will be deferred until July 1, 2006 or until reinstatement, whichever is sooner. Should respondent seek reinstatement and be reinstated to practice, he shall either pay the entire civil penalty at once or he may pay the penalty over a period of three years by making monthly payments as follows: an initial payment of \$500 upon reinstatement and 35 monthly payments of \$200. The first of the 35 monthly payments shall be due on the first of the month following reinstatement. In the event that respondent fails to make a timely payment, the full amount of the remaining payments shall immediately become due and owing. Payment shall be by certified check or money order made payable to the State of New Jersey, and shall be sent to: Kevin B. Earle, Executive Director, Board of Chiropractic Examiners at 124 Halsey Street, Sixth Floor, P.O.

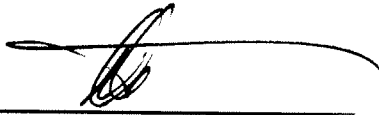
Box 45004, Newark, New Jersey 07101. In the event respondent elects not to seek reinstatement or if the Board determines that respondent's license shall not be reinstated, the entire penalty will become due and owing as of July 1, 2006.

4. Subsequent violations of the law or regulations will subject respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

5. Prior to resuming active practice in New Jersey, respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to resume practice. Any practice in this State prior to formal reinstatement of license by the Board shall constitute grounds for a charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on respondent's practice should his license be reinstated.

6. Failure to comply with any provisions of this Order or remit any and all payments required by this Order will result in the filing of a certificate of debt and may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD OF CHIROPRACTIC EXAMINERS

By 
Thomas Senatore, D.C.
Board President